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Competition - Portugal

Non-life Insurance in the Regulator's Spotlight

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Following complaints about agreements between insurance companies and vehicle repairers, the Competition Authority is focusing on the relationship between the sectors to ascertain whether competition rules have been breached, particularly the prohibition on anti-competitive agreements between companies in Article 4 of the Competition Act.

According to a press release issued on May 6 2009, the authority is also analyzing complaints of alleged abuse of dominant position by companies offering travel assistance services in relation to unilateral price fixing for breakdown assistance and towing services.

The act applies to all economic sectors, including insurance. It prohibits any form of agreement, decision or concerted practice between undertakings (or associations thereof) with the object or effect of appreciably preventing, distorting or restricting competition in all or part of a national market. In specific cases, the agreement or the concerted practice may be justified if, among other things, it contributes to improving the production or distribution of goods and services or promoting technical or economic development.

Article 6 establishes that one or more undertakings may not engage in the abusive exploitation of a dominant position in a national market (or a substantial part thereof) with the object or effect of preventing, distorting or restricting competition.

If the authority has grounds to suspect illegal conduct, it will commence an investigation and conduct enquiries to identify illicit practices and the participants. This may involve:

- asking undertakings or associations of undertakings for information and documents;
- questioning legal representatives of (i) the undertakings or association of undertakings involved, or (ii) other undertakings whose declarations the authority deems relevant;
- requesting cooperation from other public administrative services, including the police; and
- searching and seizing documents at the premises of the undertakings or associations of undertakings involved - such premises may be sealed during this process, but only for the period and to the extent necessary.

Unannounced visits to business premises by officials from the European Commission and national authorities allow investigators to gather a broader range of evidence of illegal conduct than would be found in official contracts or other documents. In Portugal, dawn raids on organizations in the telecommunications, pharmaceuticals and cereals sectors have yielded information to support decisions against undertakings for illegal practices. In 2007 the authority conducted 17 dawn raids.

An infringement of competition rules constitutes an administrative offence punishable by a fine of up to 10% of the offending undertaking's turnover for the previous year.

According to the press release, the authority has conducted a preliminary analysis of the complaints and has not found evidence of illegal conduct that would justify the opening of formal proceedings.

However, the signing on May 4 2009 of a new agreement between insurance companies in the Caixa Geral de Depósitos group and Portugal's association of vehicle repair companies, the *Associação Nacional de Empresas de Comércio e Reparação Automóvel*, may require a thorough assessment by the authority - the agreement governs the commercial terms that apply if a policyholder chooses one of the association's garages for the repair of an insured vehicle. Therefore, formal proceedings in future cannot be ruled out.

At European level, important developments in the insurance sector are expected. The EU Block Exemption

Regulation (358/2008) is under review and this procedure must be completed by the end of March 2010. The regulation exempts certain agreements between insurance companies from the EC Treaty ban on restrictive practices, such as those establishing non-binding standard policy conditions, creating insurance pools and enabling the exchange of statistical information for the calculation of risk.

The commission's preliminary findings show that two forms of cooperation which are apparently specific to the insurance sector - that is, agreements regarding co-reinsurance pools and joint calculations, tables and studies - should continue to be facilitated by an exemption. If the commission decides to narrow the exemption to these two types of contract only, insurance companies will be required to review their agreements and concerted practices accordingly.

As a result, the authority will remain sensitive to movements within the sector and is particularly likely to review how insurance companies intend to implement such amendments.

Insurance companies should consider implementing internal mechanisms to ensure that their commercial practices and relationships comply with competition law requirements. With the regulatory spotlight upon them, companies in this sector may find that prevention is the best form of insurance.

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